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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1996

RONALD COULTER AND ANISSA COULTER, et al.,

Petitioners,

SHERRY HORTON, et al.,

Plaintiffs-Respondents,

v.

METROPOLITAN LIFE INSURANCE COMPANY,

Defendant-Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

SUPPLEMENTAL BRIEF OF PETITIONERS

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This supplemental brief for petitioners is filed as authorized by Supreme Court Rule 15.8 for the purpose of respectfully calling to this Honorable Court's attention the applicability of the principles set forth in the majority opinion in Seminole Tribe of Florida v. Florida, 116 S. Ct. 1114, (1996), which was not

available to the writers of the petition for a writ of certiorari.

The Seminole Tribe case held that the Indian Commerce Clause, U.S.C.A. Const., Art. I, §8, cl.3, did not impliedly grant power to the Congress to abrogate the sovereign immunity of the States as confirmed by the Eleventh Amendment to the U.S. Constitution and that, therefore, the Congress could not abrogate the States' sovereign immunity by means of the Indian Gaming Regulatory Act, 25 U.S.C.A. §2710 et. seq.

The Seminole Tribe case also overruled Pennsylvania v. Union Gas Co., 491 U.S. 1, 109 S. Ct. 2373, 105 L.Ed.2d 1 (1989), which had held that the Interstate Commerce Clause of the U.S. Constitution, U.S.C.A Const., Art. I, §8, had impliedly granted the Congress power to abrogate the sovereign immunity of the States.

The foundation of these holdings is expressed in Seminole Tribe, 116 S.Ct. at page 1122 as follows:

> "...each State is a sovereign entity in our federal system..."

The majority opinion built upon this foundation by pointing

out in Seminole Tribe, 116 S.Ct. at page 1129 that:

> For over a century, we have grounded our decisions in the oft-repeated understanding of state sovereign immunity as an essential part of the Eleventh Amendment.

The majority opinion then cites Principality of Monaco v. Mississippi, 292 U.S. 313, 54 S.Ct. 745, 78 L.Ed. 1282 (1934). This case stated in part as quoted in Seminole Tribe, 116, S. Ct. at page 1129:

> There is also the postulate that States of the Union, still possessing attributes of sovereignty, shall be immune from suits, without their consent, save when there has been a 'Surrender of this immunity in the plan of the convention.'

Again, in Footnote 15 in Seminole Tribe, 116 S.Ct. at page 1131, the majority opinion states in part that:

> ...the Constitution specifically recognizes the States as sovereign entities...

On this basis, the majority opinion held that the Indian Commerce Clause of the U.S. Constitution, U.S.C.A. Const. Art.

I, §8, cl.3, did not impliedly grant the Congress the authority to abrogate State sovereign immunity under the Eleventh Amendment and that the Seminole Tribe of Florida could not sue the State of Florida under the Indian Gaming Regulatory Act, 25 U.S.C.A. 2510 et. seq., even though the Congress attempted to abrogate State sovereign immunity in that Act.

The issue raised in the instant case is not whether Congress exercised a granted power of abrogation of State sovereignty; but rather, the issue is whether an affirmation of State sovereignty by the Congress in the McCarran-Ferguson Act has been violated by actions of a United States District Court. The McCarran-Ferguson Act provides that. "The business of insurance and every person engaged therein shall be subject to the laws of the several States which relate to the regulation or taxation of such business."

In the instant case, the petitioners made every effort to protect their rights under the laws of their sovereign State, the Commonwealth of Pennsylvania, but were rejected at every step of the way by the Federal courts below.

The complete ignoring of the principle of State sovereignty

by the district court below is vividly illustrated by its statement, in denying relief to the petitioners, that it was applying:

> ...the federal law governing class certification and settlement approval.... The Court therefore does not need to resolve the constitutional limits on the application of state choice-of-law principles.... (App. 97a)

Thus, we have the incongruous result of the insurance regulatory laws of the sovereign States being abrogated by a Federal Rule of Civil Procedure.

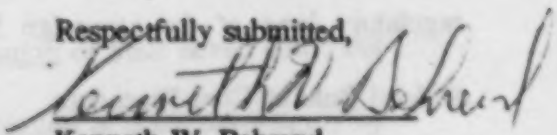
The paramount affront to State sovereignty was a national injunction issued by the United States District Court of Tampa, Florida (App.77a). Taken on its face, the injunction purports to forbid the petitioners from invoking in their sovereign State's courts the laws of their sovereign State, both common law and statutory laws, which restrict and regulate the business of insurance.

Petitioners submit that the Seminole Tribe case provides a solid foundation for reversing the Eleventh Circuit of Appeals in the instant case.

In particular, petitioners respectfully urge the Seminole

Tribe minority to join the Seminole Tribe majority in a unanimous holding that the States are sovereign entities in our Constitutional Federal form of government and that State laws cannot be nullified by actions of the Federal courts. This would be a tremendous contribution to the strength and clarity of jurisprudence in the United States.

Respectfully submitted,



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